IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12785 of 2005

Between:

R. Kashinath, S/o Shankaraiah,
CISF Unit, ONGC Jorhat, SPR Sector,

Sarupathar District, Golaghat (Assam).

..... PETITIONER

AND

1 The Deputy Commandant CISF Unit, RSTPS, Ramagundam,
Post Jyothinagar, Karimnagar District, A.P.
2 The Commandant, CISF Unit, ONGS Johrat,
Post Chinnamara, Johrat District, Assam State.
3 The Deputy Inspector General, CISF, Head Quarters,

South Zone, Block "D" First Floor, Rajaji Bhavan, Beasantnagar,

Chennai - 600 090.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in deducting the quarter penal rent @ Rs. 1,865/- w.e.f. 1-8-2004 through Proceedings No. PR-11018/7/ CISF/ONGC (J)/RFA/05-1253, dt. 1-3-2005 issued by the 2nd respondent as illegal, arbitrary as per the office memorandum dt. 30-4-2002 and consequently direct the respondents to stop the deduction of the quarter penal rent and also reimburse the amount which was deducted during the months March 2005, April and May 2005 and to pass such other order or orders.

Counsel for the Petitioner: MR.D.L.PANDU

Counsel for the Respondents.: MR.A.RAJASHEKAR REDDY

(ASST.SOLICITOR GEN.)

The Court made the following:

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P. No. 12785 of 2005

O R D E R:

This Writ Petition is filed by the petitioner aggrieved by the proceedings dated 1.3.2005 issued by the 2nd respondent, as per which the petitioner was directed to pay a sum of Rs.1865/- by way of penal rent towards the accommodation, which the petitioner stated to have retained at the previous station i.e., at Ramagundam for the purpose of his children.

2. According to the petitioner, he was transferred from Ramagundam to CISF Unit, ONGS Johrat, Assam in June 2004. As there are no educational facilities, the petitioner retained his family and children at Ramagundam in the accommodation allotted to him. As there are no specific orders for retention, the petitioner made a representation to the 3rd respondent on 13.12.2004 seeking an order for retention of the accommodation at Ramagundam for a period of one year for continuing the education of his children at that place. However, it is stated that no orders have been passed, but instead of that the impugned order was issued by the respondent-authorities. Hence, the present Writ Petition.

3. According to the petitioner, as per the Memorandum,
dt. 30.6.2002 issued by the Government of India, it was provided that where All India Service people are posted to the States in North-Eastern Region Sikkim, Union Territories of Andaman and Nicobar Islands and Lakshadweep, as per the existing orders, they are entitled for retention of the residential accommodation allotted to them and by the cited office Memorandum the said orders dated 30.6.2002 were extended for a period of three years i.e., up to 30.6.2005 or till revised orders are issued. Therefore, it is contended that by virtue of the said orders, the petitioner is entitled for retention and in fact, the accommodation is vacated on 30.5.2005 after

completion of the academic year, as requested by the petitioner.

4. But, however, it is contended by the learned Standing Counsel appearing for the respondents that in case of such retention of accommodation, the Government servant has to furnish a certificate on 1st July and 1st January of every year stating that his family members are actually residing at the Government accommodation at the last place of posting, and such a certificate will also have to be furnished at the time of seeking retention. In view of the absence of such certificate being produced by the petitioner, the petitioner's occupation would be treated as unauthorized, and therefore, the respondents are entitled to collect penal rent.

5. Heard both the learned counsel and considered the material on record.

6. The learned standing counsel for the respondents is unable to answer whether any orders are passed on the representation of the petitioner directing the petitioner to produce any certificate. When no orders are passed on the representation of the petitioner directing him to produce any certificate, the imposition of penal rent is illegal and without jurisdiction, apart from contrary to the Office Memorandum, dated 30.6.2002 issued by the Government of India, extending the earlier orders for retention of the residential accommodation by the Government employees and officers of All India Services posted to the North-Eastern Region. Admittedly, the petitioner was posted to the Northern region. Therefore, the petitioner is entitled for the benefit of the said Office Memorandum referred to above.

7. Under the above circumstances, the respondents are not entitled to collect the penal rent. Apart from that as the petitioner has already vacated the accommodation on 30.5.20025, the question of paying any penal rent does not arise. In fact, there is no express or deemed orders passed by the authorities even treating the occupation of the petitioner as unauthorized at any point of time.

8. Therefore, the Writ Petition is disposed of setting aside the demand for penal rent. No costs.

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S. Ananda Reddy, J.

Dt. 22.06.2005

Note: Issue copy in two

Days. (bo) Kvh

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To

1 The Deputy Commandant CISF Unit, RSTPS, Ramagundam,
Post Jyothinagar, Karimnagar District, A.P.
2 The Commandant, CISF Unit, ONGS Johrat,
Post Chinnamara, Johrat District, Assam State.
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4. Two CD Copies.